IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PETITION NO. 3 OF 2005
IN
SUIT No. 16 of 2005

Dinaz Firdose Tavadia. ... Petitioner.

V/s.

Firdose Jamshed Tavadia. ... Respondent.

Ms.B.N.Karbhari i/b. Karbhari & Co.
for the plaintiff.

Ms.F.D.Contractor for the defendant.

CORAM : V.C.DAGA, J.

DATED : 28th February 2006.

P.C. :

The plaintiff- wife has filed this suit for divorce under the provisions of the Parsi Marriage and Divorce Act, 1936 to seek decree of divorce against the defendant- husband on the allegations of bigamy, desertion and cruelty alleged to have been practised by him and claimed permanent alimony in lump sum.

2. In the suit, the plaintiff- wife, by way of interim petition has prayed for interim

directions against the defendant- husband for lump sum payment in the sum of Rs.5,00,000/- or monthly payment in the sum of Rs.10,000/- towards interim maintenance.

3. On being noticed, the defendant- husband appeared and filed his reply opposing interim prayer made by the plaintiff- wife.

Factual Matrix & Rival Submissions :

4. The factual matrix revel that the marriage between the parties to the suit on 19th January, 1985 is not in dispute. It is also not in dispute that, two minor children born from the said wedlock, are staying with plaintiff- wife. The plaintiff has given a long history in the plaint as to how the relationship between the parties became strain.

5. The plaintiff- wife has tried to make out a case for decree of divorce based on alleged acts of bigamy, desertion and cruelty on the part of the defendant- husband.

6. For consideration of prayer for interim relief, it is not necessary to go into the details of the plaint allegations. Suffice it to say that sometime in the month of April, 1999, the

defendant- husband had filed a suit for divorce against the plaintiff- wife in the Parsi Chief Matrimonial Court being Suit No.76 of 1999.

7. In the aforesaid suit, the plaintiff- wife (defendant therein) had filed petition for maintenance/ alimony being Petition No.7 praying for permanent alimony for herself and maintenance for the minor children.

8. The defendant, then, withdrew the aforesaid suit; sometime in the month of April, 2002 under the orders of the learned single Judge of this Court dated 23rd April, 2002.

9. The learned single Judge while permitting withdrawal of the suit held that withdrawal of the suit was with a view to deprive the wife of the alimony and maintenance for minor children. However, learned single Judge while permitting withdrawal of the suit, was pleased to direct the defendant- husband (plaintiff therein) to pay Rs.10,000/- with further payment Rs.10,000/- to the wife. Copy of the said order dated 23rd April, 2002 is placed on record of this suit.

10. It is also on record that sometime in the month of June, 1999, the plaintiff- wife had filed a complaint against the defendant- husband in the 43rd Court of the Metropolitan Magistrate, Borivli,

being Criminal Case No.74/S/1999 for having committed an offence of bigamy punishable under section 494 of the Indian Penal Code.

11. An understanding was reached between the plaintiff and the defendant during the pendency of the complaint, which came to be recorded in the form of Memorandum of Understanding (M.O.U.) dated 20th March, 2003. The same was placed on record of the complaint; wherein, the defendant- husband had undertaken to pay the plaintiff- wife Rs.3,000/- per month starting from January, 2003 on or before 10th of each succeeding month and further agreed and undertaken to increase the same in multiples of Rs.1,000/- every year from the month of January of each succeeding year. It means every year an increase of Rs.1,000 from the month of January was to take place.

12. It is not in dispute that the defendant-husband has paid an amount quite regularly from January 2003 to December 2004 but started refusing to pay the increased amount of Rs.1,000/- from the month of January, 2005 as such he did not pay Rs.5,000/- to the plaintiff- wife from the month of January, 2005 onwards. However, payment of monthly maintenance @ Rs.4,000/- per month is not in dispute.

13. The plaintiff- wife has stated in the

petition that the bare household expenses of the month work out to approximately Rs.26,000/- on an average including the tuition fees for the children. She has stated that son Ashtad is studying in 2nd year in a 3 years Diploma Computer Course and also prosecuting a Hardware Network Professional Course with Jetking Institution. For both these courses she had to pay Rs.1,00,000/- by way of tuition fees, which she could not afford to pay from her earnings as such she was required to knock the doors of the Charitable Institutions, despite the children having an able father. The plaintiff- wife has also stated that every month she is required to pay additional amount of Rs.2,000/- by way of tuition fees of Ashtad alone in order to enable him to prosecute his diploma course.

14. So far as daughter Ms.Meher is concerned, the plaintiff- wife has stated that she is studying in 9th standard. Her monthly school fee is about Rs.500/-. During vacation Meher was required to give tuition for other subjects. Her tuition fees worked out to Rs.2,000/- per month on an average. That is how, plaintiff tried to justify her claim for interim maintenance.

15. The defendant- husband has filed his reply to the petition for interim relief filed by the plaintiff- wife. The defendant does not dispute filing of the earlier suit and withdrawal thereof

including factum of the memorandum of understanding reached between the parties on 20th March, 2003 and filed in the Court of 43rd Metropolitan Magistrate, Borivli. He also does not dispute that he has agreed to pay Rs.4,000/- per month with an yearly increase of Rs.1,000/- per month from the month of January. The defendant has admitted that he did not pay Rs.5,000/- per month as agreed. He tried to justify non-payment of yearly increase saying that his income is Rs.11,500/- per month out of which he has to make provision for his old age and, after paying Rs.4,000/- per month to the plaintiff-wife; he is barely left with small amount of his salary for his sundry expenses.

16. The defendant- husband has stated that since the son has become major, his maintenance does not become the legal liability for the defendant- husband. He has further stated that the plaintiff- wife herself being in the permanent job having handsome earning much more than what the defendant- husband is earning, as such, defendant contends that no interim direction directing payment of interim maintenance as prayed be issued against him.

Consideration :

17. Having heard rival parties, without going to the disputed facts and circumstances; I propose

to consider the prayer for interim directions on the admitted facts brought on record. It is not disputed by the defendant- husband that the plaintiff- wife is not entitled for monthly maintenance. As a matter of fact, he is remitting monthly maintenance @ Rs.4,000/- to the plaintiff- wife though irregularly. Now what remains to be determined is the quantum of interim maintenance.

18. It is not in dispute that while compounding the complaint, which was filed before 43rd Metropolitan Magistrate Court, Borivli, the defendant- husband agreed to pay Rs.4,000/- to the plaintiff- wife from January, 2004. He did agree to increase the said amount with multiples of Rs.1,000/- in every succeeding year and to make regular payment thereof every month from the month of January of that year. No attempt was made by the defendant- husband to get the said understanding modified in accordance with law. With the result, the said compromise or understanding is still holding the field. It is very much binding and operative between the parties until modified in accordance with law.

19. If that be so, the above understanding itself can be adopted as a measure to determine the amount of monthly interim maintenance payable to the plaintiff- wife. It would, therefore, be reasonable to direct the defendant- husband to pay the amount of maintenance in consonance with the

MOU dated 20th March, 2003 filed in the Court of 43rd Metropolitan Magistrate, Borivli In the event of such payment pursuant to this order, it would be open for the defendant to claim adjustment of the amount paid to the plaintiff- wife, if execution of the MOU dated 20th March, 2003; incorporated in the application made while compounding the criminal complaint referred to hereinabove, is resorted to by the plaintiff- wife.

O R D E R

By way of interim directions, the defendant- husband is directed to pay @ Rs.5,000/- per month from 1st July, 2005 till 30th December, 2005 and @ Rs.6,000/- per month from 1st January, 2006 onwards with increase in multiples of Rs.1,000/- in each succeeding year commencing from the month of January till the monthly amount of maintenance reaches the maximum ceiling of Rs.10,000/- as demanded by the plaintiff- wife. This ceiling on interim relief is being put on the premise that the divorce petition itself would get disposed of by that time. In the event of non-disposal of the suit by that time, liberty is reserved in favour of the plaintiff- wife to seek modification of this order. The amount of interim monthly maintenance directed herein shall be payable on or before 10th of each English calender month, failing which, the defendant- husband shall

be liable to pay penalty for the delayed payment @ Rs.100/- per day till the amount of monthly maintenance with arrears thereof, if any, are paid in full and final.

The interim petition, accordingly, stands disposed of in terms of this order with no order as to costs.

(V.C.DAGA, J.)